

BOARD OF ZONING APPEALS
MINUTES
March 22, 2005

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on March 22, 2005, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:
DWIGHT GREENLEE, BICKLEY FOSTER, ERMA MARKHAM,
RANDY PHILLIPS, and JAMES RUANE.

The following Board members were absent:
JOHN ROGERS and JAMES SKELTON.

SHARON DICKGRAFE – Law Department present.
HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:
SCOTT KNEBEL, Secretary.
ROSE SIMMERING, Recording Secretary.

RUANE Calls meeting to order.

RUANE The first Item of business is approval of our meeting minutes from both the December 14, 2004, and also the January 25, 2005 meeting. I have a change on the minutes of December 14. On page 5, the third paragraph begins with my name, and the first reference is where it says, “Typically it is quite clear to give 15 minutes to the appellant, and 15 minutes to City staff.” I think “customary” would be a better word or “required by our Bylaws” is a more fitting comment there. I would ask that “quite clear” be stricken and that “customary” be inserted in its place. That is one correction. I have another question. On page 11, what Exhibit was being discussed as example?

KNEBEL Exhibit E is a CUP of for a property completely unrelated to the case you were reviewing, so I would suspect that it was the one that was given as an example.

RUANE We were dealing with Parcel 4, which had different language and a different amendment than what we saw there?

KNEBEL Actually Exhibit E is a pending CUP that has not yet been approved, so it would not have been amended yet.

RUANE I think there is enough confusion already, so let’s just change the one word on the December 14 minutes and leave it at that.

GREENLEE moved MARKHAM seconded to approve with one correction on the December 14, 2004 meeting minutes, on page 5, strike the words “quite clear” and replace with the word “customary” and to approve the January 25, 2005 meeting minutes no corrections.

MOTION CARRIES 5-0.

Item 2

SCOTT KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

CASE NUMBER: BZA2005-00003
OWNER/APPLICANT: Wichita Public Schools c/o Joe Hoover
AGENT: n/a
REQUEST: Variance to reduce the building setback on the south from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary School
CURRENT ZONING: “SF-5” Single Family
LOCATION: Southeast corner of 29th Street South and Osage (3030 S. Osage)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to reduce the building setback along the south property line from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary. The subject property is located at the southeast corner of 29th Street South and Osage (see attached aerial) and is zoned “SF-5” Single-Family Residential. The zoning regulations require a 15-foot building setback along the south property line, where the subject property abuts the right-of-way for Marlboro. At this location, Marlboro is only a half-street right-of-way with no street constructed. The street right-of-way is used by the school as part of the school property; therefore, the street serves as a 30-foot setback area for the proposed chiller from the adjacent residential properties to the south. The rear of the properties to the south abut Marlboro with the front of the properties abutting 30th Street South. Some properties to the south use Marlboro for access to rear of their lot, so the street cannot be vacated. Also, the street right-of-way was dedicated by the properties to the south and would revert to those properties; therefore, the setback variance would still be needed.

The applicant proposes to construct an air conditioning chiller with no setback along the south property line (see attached site plan). The only method to allow construction of the chiller with no setback is through the approval of the requested variance. The applicant indicates that the chiller needs to be constructed in the proposed location in order to avoid disruption of adjacent classrooms (see attached justification). Were the chiller to be constructed east of the school building in compliance with the setback requirements, the noise would interrupt school activities; whereas, by constructing the chiller south of the school building, it will be located 30 feet from residential property lines to south and approximately 125 feet from the nearest house. The

applicant has indicated a willingness to construct a solid screening fence along the neighbor's north property line to assist in reducing the noise from the chiller from negatively impacting adjacent properties. Such a fence is not required by the zoning regulations since the properties are separated by a street right-of-way.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-5"	Apartment complex
SOUTH	"SF-5"	Single-family residences
EAST	"SF-5"	Single-family residences
WEST	"B"	Apartment complex

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property is adjacent to a half-street right-of-way that has not been developed with a street but instead is used as part of the school property and therefore functions as a 30-foot setback area for the proposed chiller from the adjacent residential properties to the south.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the chiller would be setback 125 feet or more from the nearest residential structures. Additionally, the chiller is of a much smaller scale than the existing building on the site and would be screened from adjacent properties by a fence.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Unified Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the only logical location of the chiller is at the southeast corner of the existing building because existing mechanical infrastructure is located within the building adjacent to the proposed location for the chiller. Requiring the chiller to be located east of the building in compliance with the setback would disrupt classroom activities at the school.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the building setback and therefore there will be no effect on the general public.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setback will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the setback being reduced is a street side setback; however, the street right-of-way is not developed with a street.

RECOMMENDATION: Should the Board determine that conditions necessary to grant the variance exist, then it is the recommendation of the Secretary that the variance to reduce the building setback along the south property line from 15 feet to 0 feet be GRANTED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, screening, and landscape code requirements, except that the building setback shall be reduced from 15 feet to 0 feet along the south property line for the “New Chiller” as illustrated on the approved site plan. The setback reduction shall apply only to the improvements shown on the site plan. All other improvements on the subject property shall comply with the setback requirements of the Unified Zoning Code unless a separate variance is granted.
2. The applicant shall provide a solid screening fence in conformance with the specifications of Section IV-B.3.e. of the Unified Zoning Code along the north property line of Lots 19-23, Robson Heights 2nd Addition, unless the owners of such lots decline said fence.
3. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

MARKHAM Scott will you please explain about the half-street right-of-way? What is that?

KNEBEL As you can see to the west of the school Marlboro Street is 60 feet wide because both sides of the street are platted. When they platted the lots to the south of the school, those lots gave up half of the street right-of-way, or 30 feet of it. Since the school property is not platted, it never has dedicate to the City of Wichita the 30 feet of right-of-way for the north half of the street. The City couldn't build a street because they don't have enough right-of-way to build a street.

MARKHAM One of your pictures showed a corner of the nearest property. Where those trucks and automobiles are parked, is that school property or is that right-of-way?

KNEBEL That is street right-of-way, and I assume those are school employees who park there.

FOSTER Where is the house of Chris and Linda Roberts located?

KNEBEL If you look at the aerial it has the address numbers on it, and 716 W. 30th Street South is the fourth house east of Osage on 30th Street, which would be southeast of the location of the proposed chiller.

DICKGRAFE Will they still have access from both directions?

KNEBEL Yes, that is correct. There will not be any changes to the street right-of-way in the area.

FOSTER Is that a sidewalk along there, on the right of the building there?

KNEBEL Yes, that is correct.

FOSTER Is the chiller just inside that sidewalk?

KNEBEL According to the site plan it will be constructed on the sidewalk. The sidewalk is on school property, and it goes back to the playground area. I am sure they will have to figure out some other circulation pattern to get to the playground.

FOSTER It seems to be shown out from the building. I just wonder, Mr. Phillips, are they usually put next to the building, or out in order to get air?

PHILLIPS They typically have to have a clearance, depending on the size of the unit and the discharge, but there is almost always some separation from the building.

KNEBEL According the site plan, there is some limited separation between the chiller and the building. They are not attached.

FOSTER It is going to be halfway in the middle of that sidewalk?

KNEBEL According to the site plan, it is constructed right to the southern edge of the sidewalk.

RUSS EWY BAUGHMAN COMPANY I am here today representing for Joe Hoover, who had a family emergency. I have had a chance to look at the site. The justification that Mr. Hoover wrote, which was attached to the staff report, articulates the school district's concerns quite well. There were a few things that I thought of, and he and I discussed, regarding the location of this particular chiller unit.

One was that he wanted me to emphasize the fact that they are more than willing to go to whatever lengths to abate any type of noise through solid screening, whether that be a wood fence, and/or, more preferably, a masonry type fence. He also noted to me that they had found out that this particular chiller unit that they are installing here has an additional feature, which can be purchased, which can be termed as a "sound blanket." It would be more or less insulation within the inside of the chiller unit, which would provide a reduction of the sound. Those two components to the chiller design would go a long way to minimize any type noise impact that this would create. He also mentioned that the unit would have the ability to go into a "night mode", which would change the temperature setting, just as you are familiar within your own homes, after 7:30 p.m., and would run less frequently.

I believe the sidewalk runs the length down Marlboro Street. I don't think there would be any problem for the school district would to pour a sidewalk around the south side of the unit. That sidewalk would be located in street right-of-way, something that is typical of sidewalks anyway.

One of the pictures that Scott showed, you can see that there are classrooms from north to south, on the east face of the school building. One alternatives that Scott mentioned was to put the chiller unit pretty much around the corner, in this location, and you can immediately understand why the school district would appreciate this variance to avoid basically interrupting at least two

or more classrooms that would be directly within 10 feet of this chiller unit. Not only would it create noise, it would block the window, and you would have this mechanical equipment immediately outside the children's classrooms. So as a preference, the location on the south side of that building wall is obviously preferable.

Furthermore, you discussed a little bit that it was set out from the school building. Likewise, it has to remain within a certain distance from the school. Mr. Hoover pointed out that someone had suggested to him that it be pulled maybe 20-30 feet away from those school classrooms, and there becomes a certain inefficiency of having that chiller unit be physically separated from the mechanical room by a greater distance than what they are proposing. That is my understanding of why this variance is requested and needed.

Looking at the correspondence from Mr. and Mrs. Roberts, it appears that their concern is about access, which Scott addressed adequately, and assuming there are concerns about noise and noise projection, particularly understanding where the Roberts live, this would actually be a more preferable location than moving it to the east so we can meet that setback. That would actually move it closer to their home. I live near Hyde Elementary and have not heard their air conditioning units, and they have only a chain link fence, no sound blanket or any other type of direct abatement.

FOSTER How large of a chiller is this?

EWY The one at Hyde Elementary is about 6 feet above grade.

PHILLIPS It would be anywhere from 6-8 feet tall.

EWY Hyde Elementary is much larger compared to Lewis Elementary.

FOSTER I wonder, you see these units on tops of buildings, does this elementary school not lend itself to that?

EWY I cannot answer yes or no to that. I can only assume that has been discussed between the school district and their architect and their mechanical engineering firm that they use. The school district has been through these renovations, especially when it comes to air conditioning renovations, for the last several years. I am sure they are making every reasonable effort not to create more of an impact on the neighborhoods that they serve. I would assume they have looked at that as an option.

FOSTER Because we hear very few cases that involve something like this, and that is why I am asking. I think they are mostly put on roofs. The sidewalk, does it go to this a play area over here on the right?

EWY That sidewalk basically separates the street right-of-way, or this informal access to the homes to the south, from the playground to the north, which extends pretty far east. There is quite a large playground area there. How much that is utilized by school children I really don't know. There appears to be school children walking on it in this picture.

FOSTER Is there equipment on the site?

EWY It is just a standard playground.

FOSTER It seems to me that we need the sidewalk.

EWY I don't think there will be any problem pouring a sidewalk around the perimeter of the chiller.

RUANE You and Joe Hoover don't believe that noise abatement is necessary?

EWY No. It is my personal opinion that these things are not as bad as you think that they are. I can tell you Joe Hoover has concerns, a high level of concern, and has spent a great deal of time researching ways to abate the noise that is produced from these things. At no point in our conversation did Joe say that they do not need noise abatement. As a matter of fact, they would be more than willing to make it part of the conditions of approval, that the "sound blanket" be included, as well as the solid screening, if you deem it necessary.

RUANE Would any of the noise abatement solutions, such as this "sound blanket", make the unit less cost effective from an energy consumption perspective?

EWY I am not sure I can answer that. I would guess Mr. Phillips knows more about this than I do. I would think that the "sound blanket" would be some sort of insulation and have less to do with the mechanics or operating efficiency of the unit itself. I think it would cost no more or no less from an energy consumption standpoint and is just an additional feature that the unit can be equipped with in order to address these more sensitive location issues.

RUANE It being on the south side, the fact that a privacy fence or something along that line may create a shaded spot for the unit, really doesn't make any difference in terms of efficiency?

EWY I wouldn't imagine so.

STEVE CORBY 728 W. 30th South, Wichita, KS 67217 I have some questions. You can see some posts going across the street there that block our access from the east. My house is directly south where that car is that is in my back lot. Would the fence block my access there? Another question is would the fence also block access to and from Osage, which is to the west? Can we still have access to that?

RUANE Who is best able to answer these questions?

KNEBEL As far as the fence that is recommended in the staff report, it is to be proposed to run east/west along the north/south property line just at the north end of these properties. That is why I put in there the caveat that the adjoining property owners would have the right of refusal, because it would technically be on their property, and if they felt like it was going to impact their access, we did want to have to require that of them. It is not something that would wrap around

on Osage. It would stop at the right-of-way line of Osage and would be just an east/west running fence.

RUANE Does that mean it would run exactly on the left line of that sidewalk we see in this photograph?

KNEBEL Actually, it would run on the other side of the street.

MARKHAM Where the automobiles are.

KNEBEL It would be where the chain link fence is now, on the south end.

DICKGRAFE If you put the fence up, what is the School District going to do for that parking that they are going to lose?

KNEBEL That parking is in the street right-of-way, so they are going to have to come up with something. I assume they will still continue to park in the street right-of-way, and it looks to me that since there is not a fence there, over the years the vehicles have been creeping into the neighbor's yards.

CORBY Could we have a gate put in with the fence?

KNEBEL It would be something that the applicant would work out with the homeowners. There wouldn't be a requirement that there would not be gates allowed.

RUANE Part of question has to do with those poles that are there now?

CORBY Yes, if I can't have access from Osage coming into my property, then I will need access going out the other way.

KNEBEL It should not prevent the access on either side of those poles. I assume you come in from Osage to your property. You would still be able to do that, and that would not change at all.

RUANE After what you have heard, do you want a fence or not?

CORBY Yes, I would like a fence as long as we can have a gate in it, so we can have access from Osage and get in the back lot, because I do have a garage back there. I think the sound abatement would be good too.

DICKGRAFE That would also keep the cars from creeping into your yard.

CORBY Yes, it would.

MARKHAM Would this require more than one gate, or would this one gate service all of the applicants on that side?

CORBY There would probably be several gates, one for each property.

KNEBEL I think there are five lots, that I recommended be fenced, and each would probably want a gate.

GREENLEE Like an automobile gate, as opposed to a walk-in gate?

KNEBEL I would think it would be a 10-foot wide gate or something like that.

GREENLEE That would still be contingent to the property owners saying that they would want a fence. If they didn't want a fence there would be nothing on their property?

KNEBEL Correct.

EWY I wanted some clarification, you said five properties, do you have the lot numbers?

KNEBEL It is Lots 19-23.

FOSTER Is there any problem in requiring them to continue the sidewalk?

KNEBEL I think it would be permissible to require a sidewalk in street right-of-way, as far as being a reasonable condition, and a customary condition.

MARKHAM That sidewalk, I am wondering, who is using it?

KNEBEL When I was there taking pictures of the site, the playground was full of children, and before I started to take my pictures the teacher took them all back into the school building, using this sidewalk from the playground, so I assume that is the purpose of it.

GREENLEE You think the City put that sidewalk in or the school district?

KNEBEL I think the school district did. It is on their property to serve the playground, and it does run several hundred feet back to the playground.

DICKGRAFE It doesn't go all the way from Osage to their property line? It just goes up to the playground and stops?

KNEBEL I think it just goes to the door there, and then the parking area starts. It is kind of misleading on the site plan. In looking at the aerial it looks like it jogs to the north, and then continues out to Osage right up next to the building as opposed to what the site plan shows. On the site plan where it continues through the parking lot, that is not accurate. It actually jogs up 10 feet or so to the north, and then continues to Osage north of the parking lot.

PHILLIPS I am starting to sense a little redundancy. If we have screening at the unit and we have the abatement materials installed in the unit, it seems superfluous to have the additional fencing along the property there. Although it sounds like a good idea, I think it is money from a

sound standpoint that will not add anything to it. I don't know, Scott, how you feel about your report, and your recommendations, but screening this unit at the unit, will do more than anything because the closer you can get to screen to it, the more that you will keep the sound in, and particularly the "sound blankets" work very well in these units. This is a vertical discharge unit, so most of the noise or anything left is going to go up and not laterally. I would hate to see the school district go through the expense of more than is needed.

DICKGRAFE I also have some concerns about the school district that will be constructing a fence on someone else's property. From a long-term perspective, who is going to maintain the fence? We can look at this today and think this is a great concept, but 20 years from now, if the fence is falling down, who's responsibility is it?

RUANE I think common sense would say any wood fence with a gate large enough to accommodate automobile traffic will get more wear and tear, and need more maintenance, than would a perimeter fence in the backyard.

PHILLIPS moved GREENLEE seconded, That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the Secretary's report with the following adjustments to those recommendations. Item (2) would change to require that the applicant shall provide a solid screen fence at the chiller unit. A 5th condition would be added to require the sound abatement or "sound blanket" be installed in the chiller unit to help with the noise. A 6th condition would be added that a sidewalk be installed to continue around the chiller to connect the existing sidewalk.

FOSTER How do you view this screening being put in next to the chiller?

PHILLIPS I am going to allow the architect and engineers for the school district to do that. There are some regulations they have to be adhered to with the equipment, so they will have to determine that.

FOSTER I am just thinking wouldn't they have to have air access? This could move this sidewalk out.

PHILLIPS It is going to move it out anyhow.

FOSTER It could move it out a lot further. I am just wondering how much air they will need.

PHILLIPS I am not at liberty to do that, because I don't have the facts in front of me, to give me that, but I would trust that if you are dealing with a right-of-way there, I don't see it going too far beyond that, if it is only a 3-4 foot sidewalk. If there is 12-15 feet between the building and the property line there, that is a pretty good area to put those chillers in. Most of them are vertical discharge. If they don't do it properly then the function of the unit will be impaired.

FOSTER Are you talking about a solid screening?

PHILLIPS It can be in terms of a concrete fence, a wood fence. I would rely on that coming back to Scott and OCI to review that and make sure that it is in compliance. It is beyond us to look at that right now, in detail right now, unless you want it to come back and be approved.

FOSTER Actually, I think it would screen things better by having it there, than to have fences, which is a question of whether everyone will have a fence or not.

PHILLIPS A roof top unit like this, a lot of times is about 4-4 ½ feet tall, and when it is on a roof it will sit on a 18 inch curb, and that is where the 6 foot information comes from. In this case it will probably be put on a stand that is probably a couple of feet, so a 6-8 foot fence would screen this thing fairly well.

MOTION CARRIES 5-0.

Item 3

SCOTT KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

CASE NUMBER:	BZA2005-00007
APPLICANT/AGENT:	Don Govan (Owner/Applicant)
REQUEST:	Variance to reduce the interior side setback on the north from six feet to zero feet
CURRENT ZONING:	“SF-5” Single Family
SITE SIZE:	0.15 acres
LOCATION:	South of 20 th Street North and west of Madison (2101 N. Madison)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant owns a single-family residence on the subject property (see attached site plan). According to the applicant (see attached written justification), when he purchased the house in 1978 it was constructed with an addition on the north side that is located on the property line. Since the “SF-5” Single Family zoning district requires a six-foot setback along the north property line, the applicant has requested a variance to reduce the interior side setback along the north property line from six feet to zero feet. A variance is required to reduce building setbacks by more than 20 percent.

The addition was constructed without a building permit; therefore, there was no review of building plans by the Office of Central Inspection for compliance with setback requirements or compliance with building codes. In 2001, the Office of Central Inspection noticed the applicant replacing the siding on the addition and issued him a notice of violation for the addition encroaching into the setback and being constructed without a permit. Subsequent to receiving the notice of violation, the applicant requested a variance to reduce the side setback from six feet to three feet. At the hearing, the applicant indicated that he intended to remove three feet from

the existing structure, and a variance was granted to reduce the interior side setback on the north to three feet upon the condition that the improvements be completed within two years of approval. The applicant never completed the improvements, and the Board sent the applicant a written notice that it would hold a hearing to consider declaring the variance null and void for failure to complete the improvements. The applicant did not appear at the hearing, and the Board declared the variance null and void. Subsequently, the applicant was issued another notice of violation and has applied for the requested variance to reduce the interior side setback to zero feet.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Single-family residence
SOUTH	“SF-5” Single-family residence
EAST	“SF-5” Single-family residence
WEST	“SF-5” Single-family residence

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the applicant purchased the property with a non-conforming structure that is located within the interior side setback and has existed on the property for more than 25 years.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as there have been no complaints from adjacent property owners regarding the structure in the over 25 years that it has existed within the setback and no adjacent property owners have appeared before the Board to object to the variance.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to remove the addition or modify it in such a way that complies with setback requirements will be a financial hardship and will prevent full utilization of the addition, which has been utilized as constructed for over 25 years.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in supporting continued viable residential use of the property in an area where neglected properties have led to circumstances of blight.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as sufficient separation between structures will be provided to maintain safety and to provide for the circulation of light and air.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the interior side setback on the north from six feet to zero feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The setback reduction shall apply only to the "Existing Structure" as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. Within 60 days of approval of the variance, the applicant shall obtain a building permit for the addition that encroaches into the setback. Said building permit shall require the applicant to furnish certification from a licensed professional in a form suitable to the zoning administrator that the construction conforms to existing building codes, which the applicant shall permit to be field verified by the Office of Central Inspection. If the construction does not conform to existing building codes, the applicant shall make improvements to bring the construction into compliance with existing building codes within one year from the date of approval of the variance.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

DICKGRAFE Is this the same owner that originally got the variance or is this a new owner?

KNEBEL It is the same owner for 25 years or more.

MARKHAM Is this the owner that owned the property when this addition was put on?

KNEBEL According to the applicant, the current owner, this addition was constructed before he purchased the home in 1978.

RUANE Scott, do you have an opinion on that?

KNEBEL I have looked at the aerial photos, and it is hard to tell. In 1977 it looks like it is not there, and then in 1983 it is less easy to tell if it is there or not, and in 1986 it is more clear that it is there. In 2001 it was there, but it has been there for 20 years or more.

DON GOVAN I own this property. After reviewing the Secretary's Report, I would agree, and I see no problems with complying with each and every one of the conditions. As was stated, in 1978 I purchased this home in good faith, and moved in in early 1979. I have been using this same structure and space, and I had no knowledge at that time that there was any issue or problem with the home. The City Inspector, sometime in 2001, notified me about this. This was my first knowledge that there was any issue. What was happening at that time is that the siding at the bottom had started to rot, and I had it replaced, and I just put the last coat of paint on it when he notified me that there was a violation here, and that was my first knowledge of the problem.

RUANE You are sure you had nothing to do with the construction of this addition?

GOVAN I am sure I had nothing to do with this addition. I don't do carpentry, and I don't build anything. I don't work with wood.

RUANE Your neighbor to the south is that property owner occupied?

GOVAN It is vacant at this time, but it is up for rent. They have recently done some improvements before they rented the property, I am not sure who the owner is, but I knew the previous owner. They seem to have a problem keeping occupants.

RUANE Does noise from that house disturb you when it is occupied?

GOVAN Not on the south side, normally it is not a problem.

RUANE Let's start over, the property on the north, is that owner occupied?

GOVAN Yes, it is occupied by a Puerto Rican gentlemen that has lived there for many years. He is neighborly, and we have helped each other in many ways. He lives alone, and we have been good friends.

RUANE He wouldn't have any complaint about noise from his house?

GOVAN I have never had any complaints. He is in a band, and he plays his instruments sometimes, but that has not been a problem.

FOSTER Is there a window on that side of the house?

GOVAN Yes there is one window on the north side. There is one window toward the front. There is none in the latter part of the addition. It was planned for a walk-in closet because the house is so small. Space is at a premium. Closet space I was short of. The window is basically where the awning is on my neighbors house. It is almost in the same exact position.

FOSTER Where this seems kind of odd to us, and I am sure that we prefer that this not be like that, it is and it exists. I think we have to recognize that this was done many years ago without a permit and evidently is not related to the people who own it now.

FOSTER moved MARKHAM seconded, That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the Secretary's report.

MOTION carries 5-0.

ITEM 4

SHANER I have no report.

Meeting adjourned 2:38 p.m.